



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 12, 1998

Mr. Edgar O. Coble, Jr.
Attorney and Counselor at Law
2200 Forest Park Blvd.
Fort Worth, Texas 76110

OR98-1906

Dear Mr. Coble:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117434.

The Grand Prairie Independent School District (the "district"), which you represent, received an open records request for information

regarding the job performance of SGPHS Principal Kim Brown. Also would like to have information regarding her medical leave. Would also like information regarding her assignment (specifically has she been approved to return to the campus in the fall.)

You have submitted four documents to this office as being responsive to the request and contend that these documents are excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. The first document you seek to withhold is the principal's performance evaluation. Section 21.355 of the Education Code provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that an "administrator" is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is performing the functions of an administrator at the time of his or her evaluation. *Id.* at 4. Assuming the principal in question meets this criterion, we conclude that the release of the performance evaluation is governed by section 21.355 of the Education Code and accordingly must be withheld from the public.

We next address whether the district's records pertaining to the principal's medical leave are made confidential by the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2654, in conjunction with section 825.500(e) of title 29 of the Code of Federal Regulations. Section 825.500 is promulgated pursuant to authority contained in the FMLA. *See* 29 U.S.C. § 2654. Section 825.500(e) provides as follows:

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, shall be maintained in separate files/records and be treated as confidential medical records.

29 C.F.R. § 825.500(e).¹ Under the FMLA, an employer may require a medical certification from a health care provider to support FMLA leave requests either to care for an employee's seriously ill family member or for leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job. *Id.* § 825.305. Recertification may also be required. *Id.* The three remaining documents at issue are clearly "records and documents relating to medical certifications, recertifications or medical histories" and as such must be withheld from required public disclosure under section 552.101 of the Government Code in conjunction with FMLA.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

¹ An "employer" under the FMLA includes any "public agency," as defined in section 3(x) of the Fair Labor Standards Act, 29 U.S.C. § 203(x). *Id.* § 825.108(a). Section 3(x) of the Fair Labor Standards Act defines "public agency" to include an agency of the United States, a state, or a political subdivision of a state, or any interstate governmental agency. *See* 29 U.S.C. § 203(x); *see also* 29 C.F.R. § 825.108. The district is a "public agency" for purposes of the Fair Labor Standards Act and an "employer" for purposes of the FMLA.

Ref.: ID# 117434

Enclosures: Submitted documents

cc: Ms. Shelly Moon
Grand Prairie News
1000 Ave. H East
Arlington, Texas 76011
(w/o enclosures)